

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CIVIL ACTION NO. 07-3343

3 ANGEL VARGAS, FELIX BONILLA, :
4 RYAN MC KENZIE, BERNARDO :
5 RAMIREZ & SIMON NORALES, :
6 :
7 Plaintiffs, :
8 -v- : DEPOSITION OF:
9 :
10 MIDTOWN AIR CONDITION AND : RYAN MC KENZIE
11 VENTILATION, LTD., :
12 :
13 Defendant. :
14 x - - - - - x

15 T R A N S C R I P T of the stenographic
16 notes of the proceedings taken by and before JOHN
17 KEVIN STONE, a Certified Shorthand Reporter and
18 Notary Public of the State of New Jersey at the
19 offices of OGLETREE, DEAKINS, NASH, SMOAK &
20 STEWART, ESQS., 521 5th Avenue, New York City, New
21 York 10175, on Monday, November 19, 2007,
22 commencing at 11:00 a.m.

23 A P P E A R A N C E S:

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26 Brooklyn, New York 11242
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28 OGLETREE, DEAKINS, NASH,
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BRAZAITIS, HALPERIN & STONE
P.O. Box 22363
Newark, New Jersey 07101
(973) 994-2940

1 form?

2 A No.

3 Q Did you transfer to another school?

4 A No.

5 Q Did you -- do you have any other
6 college education besides Baruch?

7 A No.

8 Q What did you study while you were at
9 Baruch?

10 A Advertising, marketing.

11 Q Did you study anything related to
12 sheet metal work?

13 A No.

14 Q Do you have any vocational training?

15 A Not quite sure I understand the question.

16 Q Have you gone to any schools or
17 institutes to try to learn a trade?

18 A Local 38.

19 Q What did you study there?

20 A Sheet metal.

21 Q Do you recall when this began?

22 A Maybe it would be around 2001. I'm not
23 sure.

24 Q How did you learn about Local 38?

25 A Through friends.

1 record.

2 BY MR. CAPPOZOLA:

3 Q Do you belong to any organizations
4 relating to sheet metal work?

5 A No.

6 Q Do you belong to any organizations
7 relating to any other kind of professional trade?

8 A No.

9 Q How did you learn about Midtown
10 Air-Conditioning?

11 A I had a couple of friends that worked there.

12 Q Who were they?

13 A There's this Christopher

14 Q What's his last name?

15 A I just know him as Christopher.

16 Q Okay.

17 And who else?

18 A Uhm -- there's this guy called Mack.

19 Q Do you know his last name?

20 A No.

21 Q How do you know them?

22 A Mack I worked with at Abduc.

23 Q How do you know Christopher?

24 A Christopher, I knew him from around the way.

25 Q Does he live in White Plains?

1 A Who?

2 Q Christopher.

3 A No.

4 Q What do you mean by "around the way"?

5 A Around the way of -- on the -- just around
6 the way. It's just from hanging out.

7 Q So you knew him socially?

8 A On some social level.

9 Q And you said both of these
10 individuals worked for Midtown. Correct?

11 A Yes.

12 Q Do you know their positions for
13 Midtown?

14 A No.

15 Q Are they still employed there?

16 A No. They were on and off. They weren't
17 fully employed.

18 Q What did they tell you about coming
19 to work at Midtown?

20 A They say I should try it.

21 Q Did they tell you why?

22 A No. It's a sheet metal company. Oh, I'm
23 sorry.

24 Q Did -- did -- were you unhappy with
25 Local 38?

1 A Yes.

2 Q Why were you unhappy with Local 38?

3 A Because I had to drive to my jobs.

4 Q Why was this a problem for you?

5 A Because today it would be five miles,
6 tomorrow it would be 15 miles.

7 Q And what does that mean?

8 A What do you mean, "what does that mean"?

9 Q And did that mean -- was the commute
10 too long? I'm trying to understand what was wrong
11 with having to drive different distances.

12 A The commute was a problem.

13 Q Do you remember what you were making
14 at the end of your tenure with Local 38?

15 A No.

16 Q So how did you end up becoming an
17 employee of Midtown Air?

18 A I -- I was given Roman's number and I gave
19 him a call.

20 Q Is this Roman Lieberstein?

21 A Yes.

22 Q What did you tell him?

23 A I told him that I was looking for work.

24 Q What did he say?

25 A He asked if I had experience, I said yes.

1 Q Did you tell him you were a member of
2 Local 38?

3 A Yes.

4 Q What did he say when you told him you
5 were a member of Local 38?

6 A He said nothing.

7 Q So after he asked whether you had
8 experience and you said yes, what did he say next?

9 A We spoke about coming in for work.

10 Q Did you speak with anyone else from
11 the company before you were hired?

12 A No.

13 Q Do you remember when you first hired
14 at Midtown Air?

15 A It was I think in August. August of '03, I
16 think. August, September, I don't remember. I'm
17 not sure.

18 Q Do you remember what you were paid
19 when you started working at Midtown Air?

20 A \$15.

21 Q Do you know what your benefits were?

22 A We had full benefits. Dental and health.

23 Q What about vacation?

24 A Yes, we had vacation.

25 Q Do you know how much?

1 a crime?

2 A No.

3 Q Have you ever been accused of a
4 crime?

5 A No.

6 Q Have you ever been arrested?

7 A No.

8 MR. CAPOZZOLA: Just mark this as
9 defense two.

10 (The complaint was received and
11 marked McKenzie-2 for identification).

12 BY MR. CAPOZZOLA:

13 Q Have you seen that document before?

14 A Yes.

15 Q Can you tell me what it is?

16 A I think this is a claim for the lawsuit.

17 Q This is the complaint --

18 A Yeah.

19 Q -- for the Vargas versus Midtown Air
20 lawsuit. Correct?

21 A Yes.

22 Q Can you turn to page 6, please.

23 Now, you filed a lawsuit claiming
24 race discrimination. Correct?

25 A Yes.

1 Q It says here in your complaint --
2 A Hhmm-hmm.
3 Q -- that your payment was below the
4 standard wage and hours --
5 A Hhmm-hmm.
6 Q -- for similarly situated sheet
7 metal mechanics.
8 A Hhmm.
9 Q And I'm asking about the hours.
10 A Oh, the hours might be a typo, the hours are
11 fine.
12 Q So you're not making any claim
13 relating to the hours. Is that correct?
14 A Well, no, the claim was based on the pay,
15 the hours we worked regular hours.
16 Q The next sentence says, "Indeed, the
17 prevailing wage at all relevant times was about 39
18 to \$40 an hour." Is that correct?
19 A To the best of my knowledge.
20 Q The next sentence says, "Defendant
21 paid Ryan McKenzie less than similarly situated
22 caucasian workers." Is that true?
23 A Yes.
24 Q Who were you paid less than?
25 A I was paid less than Alex. I was paid less

1 made more money.

2 Q Did you tell them what you made?

3 A No.

4 Q In paragraph 20 of your complaint --
5 pardon me, paragraph 21.

6 A Paragraph 21?

7 Q This is on page 10.

8 A Okay.

9 Q It reads, "By discriminating against
10 plaintiffs on account of their raises and alienage
11 and on account of their good faith complaints
12 about discrimination, defendant violated 42 U.S.C.
13 Section 1981 et seq.."

14 First of all, what acts by Midtown
15 Air do you believe violated any of your legal
16 rights?

17 A Okay. In -- in the trade, whenever the work
18 slows down, the practice is usually last man
19 hired, first to go.

20 Q Okay.

21 A All right. At Midtown it was always myself
22 or maybe Bernardo or maybe Felix that would be let
23 go, even though there were guys that were hired
24 behind us.

25 Q So are you complaining about more

1 than one time that you were laid off?

2 A Yes.

3 Q How many times?

4 A I think about two to three times.

5 Q Is it two or is it three?

6 A Uhm, I'm not sure if it was two or three.
7 It was about two or three times.

8 Q Do you remember the first time?

9 A Do I remember --

10 Q The first time that you were laid off
11 that you think you shouldn't, that someone else
12 should have been laid off --

13 A You mean the details of the first time I was
14 laid off?

15 Q Yes. Assuming that that's --

16 A No, the first time I didn't pay too much
17 attention to it because I -- I'd pretty much just
18 been hired, you know, I was one of the new guys.
19 So I didn't look into it too much at that time.

20 Q So then if you were one of the new
21 guys and you were the first one laid off, do you
22 still contend that that was discriminatory?

23 A Yes.

24 Q Why?

25 A Because like I said, at that particular time

1 I didn't look into it too much. But then there
2 was a pattern that developed.

3 Q But if -- let's suppose you were the
4 last one hired. If you're the first one laid off,
5 are you claiming that that's discriminatory?

6 A But I wasn't the last one hired.

7 Q Who was?

8 A There was another guy that was hired behind
9 me.

10 Q Who?

11 A I'm not sure of his name. The Russian guys,
12 I can't pronounce their names.

13 Q Can you describe him?

14 A He wore glasses, he was short.

15 Q Is there really some specific person
16 you're thinking about?

17 A Yes, I am thinking about someone specific.

18 Q Someone who was hired between the
19 time you were hired --

20 A Yes.

21 Q -- and the time you were first laid
22 off?

23 A Yes, yes. Yes.

24 Q Did you ask anyone why wasn't this
25 person laid off?

1 A No. Like I said, I was new at the time. I
2 didn't, you know.

3 Q Were you pulled off of a project
4 because work was slow?

5 A I was told work was slow.

6 Q But were -- were you told work was
7 slow during the middle of a project you were
8 working on?

9 A Yes.

10 Q And were you pulled off of that
11 project?

12 A Yes.

13 Q Did someone else go on to that
14 project?

15 A Yes, as a matter of fact.

16 Q Who went onto that project?

17 A Both Eddies went on to the project.

18 Q Which project is this?

19 A The 9th Precinct.

20 Q Okay.

21 And how about the next time?

22 A The next time was I think the last time I
23 was laid off.

24 Q Do you remember the date?

25 A It was I think in '05, November or December.

1 Q Did you ever file a grievance with
2 your union about Midtown?

3 A No.

4 Q Let's go back to the complaint, I
5 think it's Exhibit 2. Turn to page 11, please.

6 Paragraph 27 on page 11 reads, "By
7 refusing to pay plaintiffs a prevailing wage for
8 similarly situated mechanics with City of New York
9 contracts, defendants willfully violated Article
10 1, Section 17 of the -- I'm sorry, the New York
11 State Constitution and Labor Section 220, et
12 seq.."

13 Do you claim that you are owed
14 additional wages by Midtown?

15 A Additional wages?

16 Q Correct.

17 A I'm not sure of your question.

18 Q Okay.

19 I take this cause of action to mean
20 that you believe Midtown owes you wages that --
21 prevailing wages specifically that it did not pay
22 you in the past. Am I misinformed?

23 MR. WOTORSON: Objection to form.

24 A I still don't understand what you said.

25 Q Do you believe Midtown owes you wages

1 for the services you performed while you were
2 employed by Midtown?

3 A No, at the time of this complaint, yes.

4 Q At the time of which complaint?

5 A When this complaint was filed.

6 Q Are you talking about the Department
7 of Labor charge or are you talking about --

8 A At the time of the Department of Labor
9 charge, yes.

10 Q Okay.

11 So you believed at the time you filed
12 your Department of Labor charge --

13 A Hhmm-hmm

14 Q -- Midtown owed you wages?

15 A Yes.

16 Q Do you still believe Midtown owes you
17 wages?

18 A No.

19 Q Why not?

20 A 'Cause there was the comptroller's, after
21 they did their investigation, there was a back pay
22 that came back to us.

23 Q So you obtained money from the New
24 York City comptroller. Correct?

25 A Yes.

1 A In 2004. On and off 2004.

2 Q Did you work on any other prevailing
3 wage jobs?

4 A It was on St. Francis Hospital in Long
5 Island.

6 Q Why do you believe that that's a
7 prevailing wage project?

8 A Because it was a union job.

9 Q Was the recreation department, I'm
10 sorry, the 18th Street project, was that a union
11 job?

12 A Yes.

13 Q Were there any other projects you
14 believe you were entitled to prevailing wages for?

15 A There was a job on, I think, 35th Street,
16 36th Street, between 8th and 7th I think it was.

17 Q What -- who was that for?

18 A Who was it for?

19 Q Yes.

20 A Midtown, working for Midtown.

21 Q Do you know who the customer was?

22 A No. That I don't remember at this time.

23 Q Any others?

24 A Not that I can remember at this time.

25 Q Is there anything that would help you

1 remember?

2 A Maybe if I was to go through, I don't know,
3 documents.

4 Q Are they here?

5 A I don't know.

6 MR. WOTORSON: I didn't hear what you
7 said?

8 THE WITNESS: Hmm?

9 MR. WOTORSON: I didn't hear what
10 your response --

11 THE WITNESS: Oh, I said maybe if I
12 was to go through all the documents that
13 were -- that were before.

14 BY MR. CAPOZZOLA:

15 Q But you don't have the documents
16 here. Correct?

17 A No. Unless -- unless you have some.

18 Q I don't think so.

19 Which documents are you talking
20 about?

21 A Work documents.

22 Q So you believe you're entitled to
23 minimum wages on the 18th Street project, the St.
24 Francis project, on the 35th and 36th, between 8th
25 and 7th?

1 A That's my belief.

2 Q You don't believe you're entitled to
3 any other prevailing wages from the 9th Precinct
4 job. Correct?

5 A Correct.

6 Q Do you have any documents relating to
7 the 18th Street job?

8 A Pay stubs. I don't know.

9 Q Did you ever complain to anybody that
10 you should be receiving prevailing wage for anyone
11 of these three projects?

12 A No.

13 Q Did any of these three projects --
14 strike that.

15 Did you work on any of these projects
16 after you completed the 9th Precinct job?

17 A No.

18 Q So they all came before?

19 A Yes.

20 Q Are you claiming emotional distress
21 damages in connection with this lawsuit?

22 A Yes.

23 Q Have you visited any doctors in
24 connection with this claimed emotional distress?

25 A No.

1 you because you're black. Is that right?

2 A Yes, in part.

3 Q Why do you believe that to be the
4 case?

5 A Okay. There was a particular time I was
6 laid off and told the job was slow, there was no
7 work, I was removed from the job project. I got a
8 call from somebody working on the job saying that
9 there were Russian guys there working. I called
10 Roman, spoke to him about it, and his response to
11 me was so, so what.

12 Q He said "so what"?

13 A So --

14 Q So.

15 A Yes.

16 I spoke to him, I said, "Roman, you
17 know, you pulled me off the job. You said there
18 was no work there, and now you have two guys
19 working there." And he was like "so."

20 Q What did you say to that?

21 A Nothing.

22 Q How did you know that the guys who
23 were still working were Russian?

24 A I was told they were Russians.

25 Q By whom?

1 A By -- he was a laborer, his name is Will.

2 After --

3 Q Go ahead.

4 A I was saying, after being on the job for a
5 long period of time you kind of develop a
6 relationship with the guys on the job.

7 Q Was Will a Midtown employee?

8 A No.

9 Q Is there anything else other than
10 this conversation with Roman?

11 A And that was my one -- that was my instant.

12 Q So the answer is no?

13 A No, for me personally, yes.

14 Q And was this the first or the second
15 time?

16 A That was the second time.

17 Q Okay. I think I understand it now.

18 So the first time you didn't
19 investigate it because you had only been there for
20 a short while. Is that right?

21 A Correct.

22 Q On the complaint letters from Ivy
23 Walk, do you think that the reasons stated in that
24 letter are just reasons for not calling an
25 employee back?

EXHIBIT D

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4x
ANGEL VARGAS, FELIX BONILLA,
5 RYAN MCKENZIE, BERNARDO RAMIREZ AND
SIMON NORALES,

6 Plaintiffs,

7 - against -

8 MIDTOWN AIR CONDITIONING AND
VENTILATION, LTD.,

9 Defendant.
.....x

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11 2 Penn Plaza
New York, New York

12
December 3, 2007

13 11:20 A.M.

14
15 DEPOSITION of BERNARDO RAMIREZ, one of the
16 Plaintiffs, taken by the Defendant, pursuant to Order,
17 held at the above-noted time and place, before a Notary
18 Public of the State of New York.
19
20
21
22
23
24
25

1 Bernardo Ramirez 24

2 That is the University.

3 Q So you went to a University in
4 Honduras and graduated in 1997?

5 A Yes.

6 Q What did you study at the University?

7 A Social Sciences.

8 Q Social Sciences?

9 A Yes.

10 Q Like government, history?

11 A Yes.

12 Q Were you in elementary school between
13 1989 and 1997?

14 A Say that again.

15 Q Were you an elementary school teacher?

16 A Yes.

17 Q When were you an elementary school
18 teacher?

19 A It was 1990 to 1996.

20 Q So 1990 through 1996.

21 Is that correct?

22 A Yes.

23 Q What did you do after you graduated
24 from the University?

25 A I was a middle school teacher.

1 Bernardo Ramirez 25

2 Q How long did you do that?

3 A For two years.

4 Q Did you have any other jobs in
5 Honduras after being a middle school teacher?

6 A No.

7 Q Was that when you came to the United
8 States?

9 A Yes.

10 Q Did you ever work with sheet metal
11 while you lived in Honduras?

12 A No.

13 Q Did you ever do any kind of training
14 regarding sheet metal work in Honduras?

15 A No.

16 Sheet metal -- I did training for
17 welding.

18 Q When did you train as a Welder?

19 A When did I train?

20 As what do you mean when?

21 Q When, yes.

22 A 1999. That was in Honduras.

23 Q That was in Honduras?

24 A Yes.

25 Q Where did you train?

1 Bernardo Ramirez 26

2 A It was a school.

3 They call it like a --

4 Q Was it a vocational school?

5 A Yes, vocational school.

6 Q How many classes did you take?

7 A It was like -- seven or eight -- three

8 month seminar.

9 Q Three month seminar?

10 A Yes.

11 Q How often did you meet with your

12 class?

13 A Ask that question again.

14 Q Were you part of a class with other

15 people?

16 A Yes.

17 Q How often did you meet with the class?

18 Did the class meet once a week?

19 A No.

20 Every day.

21 Q For how long every day?

22 A Eight hours every day.

23 Yes, eight hours.

24 Q You were not teaching in the middle

25 school at this time.

1 Bernardo Ramirez 27

2 Is that correct?

3 A No.

4 That was 1989 that I was a student.

5 Q This was in '89?

6 A Yes, '89.

7 Q Your welding training?

8 A Yes.

9 Q Did you do any other kind of
10 vocational education in Honduras?

11 A No.

12 Q Did you do any other kind of school
13 while you were in Honduras?

14 A No.

15 Q When you came to the United States,
16 did you go straight to New York?

17 A Yes.

18 Q When you came to the United States, is
19 that because your mother was living here?

20 A Yes.

21 Q At this time, you had three children.
22 Is that correct?

23 A Yes.

24 Q Since coming to the United States,
25 have you done any kind of education or training?

1 Bernardo Ramirez 28

2 Since coming to the United States,
3 have you done any vocational training?

4 A Ask that again.

5 Q Have you gone to any schools since
6 coming to the United States?

7 A Yes.

8 Q What schools?

9 A Refrigeration Training Center.

10 Q Where is that located?

11 A That is here in Manhattan.

12 Q Have you gone to any other schools?

13 A Yes.

14 Q What schools?

15 A I got to like to be a Security
16 trainer. Security Guard.

17 Q Have you gone to any other schools?

18 A No.

19 Q So the only two schools that you have
20 gone to since being in the United States was the
21 Refrigeration Training Center and the Security
22 Guard training?

23 A Yes, correct.

24 Q Did you do any training as a member of
25 Local 810?

1 Bernardo Ramirez 29

2 A No.

3 Q When did you go to the Refrigeration
4 Training Center in Manhattan?

5 A 19 -- 2000.

6 Q How about the Security Guard Training?
7 When was that?

8 A That was 1998.

9 I mean it was 1999. Because I go in
10 December 1999.

11 Q What did you study at the
12 Refrigeration Training Center?

13 A Air Conditioning.

14 Q How long was that program?

15 A It was three months.

16 Q Did you study every day?

17 A No.

18 Q How often?

19 A It was like Saturdays and Sundays.
20 Like six hours every Saturday and Sunday.

21 Q Six hours a day on Saturday and
22 Sunday?

23 A Yes.

24 Q Did you learn to work with sheet metal
25 there?

1 Bernardo Ramirez 30

2 A No.

3 Q What did you learn there?

4 A I learned with the sheet metal guys,
5 they take me to work sometimes with them in the
6 weekends.

7 Q Were there classes?

8 A No.

9 They take me to the site. You have to
10 work with them.

11 Q How did you find out about this
12 Training Center?

13 A How?

14 Q Yes.

15 A In the newspaper.

16 Excuse me. Sorry.

17 Can you ask me that question again?

18 Q How did you learn about the
19 Refrigeration Training Center?

20 A In the newspaper I find out.

21 Q Do I understand you correctly that
22 this training center introduces you to sheet metal
23 workers that take you with them to the work site?

24 Is that correct?

25 A Yes.

1 Bernardo Ramirez 31

2 Q Were you paid for that?

3 A Yes.

4 Q You participated in this Training
5 Center for three months.

6 Is that correct?

7 A Correct.

8 Q Did you meet any of the other
9 Plaintiffs in this lawsuit at the Training Center?

10 A I don't understand the question.

11 Q Did you meet anyone who worked at
12 Midtown Air Conditioning and Ventilation at the
13 Training Center?

14 A No.

15 Q Did you receive any certificates or
16 other awards from the Training Center?

17 A No.

18 Because I don't finish.

19 Q Did you receive any certificates or
20 awards from your Security Guard training?

21 A Yes.

22 Q What did you receive?

23 A A certificate.

24 Q Have you ever worked as a Security
25 Guard?

1 Bernardo Ramirez 32

2 A No.

3 Q Do you know the name of that company
4 that issued the certificate?

5 A I don't remember now.

6 Q Do you have any physical or mental
7 disabilities?

8 A No.

9 Q Do you possess any licenses other than
10 a driver's license?

11 A No.

12 Q Do you have a driver's license?

13 A No.

14 Q You don't have a driver's license?

15 A No.

16 Q Do you belong to any Unions?

17 A Say that again.

18 Q Do you belong to any Unions?

19 A Yes.

20 Q Which Unions?

21 A 810.

22 Q Do you belong to any other Unions?

23 A No.

24 Q Have you ever belonged to any other
25 Unions since you moved to the United States?

1 Bernardo Ramirez 50

2 MR. CAPOZZOLA: Are you going to
3 refuse to answer the question?

4 MR. WOTORSON: I'm instructing him not
5 to answer the question.

6 THE WITNESS: Yes.

7 MR. CAPOZZOLA: Mark it for a ruling.

8 Q You said in June of 1999 you were
9 hired by Midtown.

10 Is that correct?

11 A Yes.

12 Q Can you tell me how you became an
13 employee of Midtown?

14 A Simon found me.

15 Q Simon Norales?

16 A Yes.

17 Q How did you first meet Mr. Norales?

18 A At a barbecue. A friend of mine took
19 me to a barbecue and we met over there.

20 I was looking for a job and he was
21 working at that time with Midtown.

22 So I speak with him if he can get me
23 work.

24 Q Did you talk to him about finding work
25 at the barbecue?

1 Bernardo Ramirez 51

2 A Yes.

3 Q When you became an employee of
4 Midtown, did you also become a member of Local
5 810?

6 A No.

7 Q How long were you an employee of
8 Midtown before you became a member of Local 810?

9 A Like eleven months.

10 Q Is that eleven months before your
11 Apprenticeship even started?

12 A No.

13 I was an Apprentice when I started.

14 Q Were you an Apprentice when you
15 started?

16 A Yes.

17 Q Do you recall what your wage was when
18 you started?

19 A Yes.

20 Q What was it?

21 A \$7.00 an hour.

22 Q And you were a Helper at this time?

23 A Right. Yes.

24 Q What were your job duties when you
25 started working at Midtown?

1 Bernardo Ramirez 77

2 Q Are there any other things that you
3 can think of?

4 A Yes.

5 Q What else?

6 A Just ask to work in the winter time.

7 Q Repeat that?

8 A They sent us to work in the winter
9 time outside of the City, far.

10 And we have to be working on a roof.

11 Q Is there anything else?

12 A No.

13 Q I want to make sure that I have a
14 complete list of the things that you're
15 complaining about for the discrimination claim.

16 The first thing that you mentioned was
17 being laid off and having the Russian guys replace
18 you.

19 The next thing that you mentioned was
20 being paid less than the other employees.

21 The next thing that you mentioned was
22 making you do City projects, but paying the
23 Russian guys more.

24 And the last thing that you just
25 mentioned was that they sent you to work outside

1 Bernardo Ramirez 78

2 in the winter time.

3 Is there anything else that you claim
4 Midtown did to discriminate against you besides
5 those things?

6 A No.

7 That is it.

8 Q That is it?

9 A Yes.

10 MR. CAPOZZOLA: We will take a lunch
11 break now.

12 (Lunch at 1:30 p.m.)

13 (EBT resumed at 2:10 p.m.)

14 MR. CAPOZZOLA: We are back on the
15 record.

16 Q You testified that you earned \$7.00 an
17 hour when you started at Midtown.

18 Is that correct?

19 A Yes.

20 Q How much were you making at the time
21 that you stopped working in 2006?

22 A \$19.00.

23 Q \$19.00 an hour?

24 A Yes.

25 Q During this period from 1999 to 2006,

1 Bernardo Ramirez 91

2 A Yes.

3 Q What else is there?

4 A Say that question again.

5 Q Is there anything else that you can
6 tell me about these people to help me identify
7 them, that you have not told me about already?

8 A No.

9 That's it.

10 Q You have told me everything that you
11 can to identify them?

12 A Yes.

13 Q Did Alex tell you how much he made?

14 A Yes.

15 Q What did he say?

16 A He was making more money.

17 Q Did he say how much?

18 A Yes.

19 Q Do you recall what he said?

20 A Yes.

21 Q What amount of money did Alex say that
22 he was making?

23 A He was making \$25.50.

24 Q And he told you this at the Chelsea
25 project?

1 Bernardo Ramirez 92

2 Is that correct?

3 A Yes.

4 Q Do you know what year it was?

5 Do you know what year the Chelsea
6 project was, approximately?

7 A Yes.

8 Q When was that?

9 A 2003 or 2004.

10 Q Were there any other times that Alex
11 told you that he was being paid more than you?

12 A Yes.

13 Q When?

14 A All the time that we moved to the
15 projects, he would get more raise. He would get a
16 raise.

17 Q Which other project?

18 A The school.

19 He was making \$40.

20 Q He was making \$40 an hour at the
21 school?

22 A Yes.

23 Q Was he being paid the prevailing wage?

24 A I don't know.

25 He tell me he was making \$40 an hour.

1 Bernardo Ramirez 107

2 I'm asking you about your general
3 knowledge and what you understood while you were
4 employed by Midtown.

5 Okay?

6 You understood that there was a
7 procedure by which the Union could help you with
8 complaints about Midtown, right?

9 A Yes.

10 Q And you believed that you were being
11 discriminated against throughout most of your
12 employment at Midtown, right?

13 A Yes.

14 Q So why didn't you take advantage of
15 that procedure that your Union has?

16 A Say this question again, please. I
17 don't understand.

18 MR. CAPOZZOLA: Read the question.

19 (Record read as requested.)

20 Q After listening to that again, do you
21 understand the question that I'm asking you?

22 A No.

23 Q If you believed that you were being
24 discriminated against, and you knew that your
25 Union had the procedure to help you, why didn't

1 Bernardo Ramirez 108

2 you let the Union help you?

3 MR. WOTORSON: Objection to the form.

4 A I don't understand that question.

5 MR. WOTORSON: You can answer if you
6 understand it.

7 Q You have to answer if you understand
8 it.

9 MR. WOTORSON: You can answer the
10 question if you understand the question.

11 If you answer it, if you don't
12 understand it, he will try to ask it in a
13 way that you can understand.

14 A I don't go to Union because I believe
15 the Delegate talked with the Supervisor or talk
16 with the owner of the company.

17 And I think they're friends. So I
18 don't believe in these guys.

19 Q So, you're saying that you did not
20 believe the Union would be able to help you?

21 A I don't believe in that Delegate.

22 Q Who was the Delegate of the Union?

23 A I don't know.

24 I don't remember his last name.

25 Q Is he also an employee of Midtown?

1 Bernardo Ramirez 113

2 got \$27.00?

3 A Yes.

4 Q Was that the only time you were paid
5 \$27.00 an hour?

6 A Yes.

7 Q Do you know what the prevailing wage
8 was for that work?

9 A Yes.

10 Q What was it?

11 A \$67.00.

12 Q How do you know that?

13 A I spoke with someone from Local 28.

14 Q Who is that?

15 A It was the Delegate for Local 28.

16 Q Do you know the person's name?

17 A No.

18 Q Did they talk to you at the Ninth
19 Precinct?

20 A Yes.

21 Q Did the Ninth Precinct job occur
22 before or after the Brooklyn school job?

23 A Before the school job.

24 Q Another basis for your discrimination
25 complaint is the layoffs that you had, right?

1 Bernardo Ramirez 114

2 A Yes.

3 Q I believe that you told me that there
4 were three layoffs.

5 Is that correct?

6 A Yes.

7 Q One in February 2003. One in the
8 summertime, 2004 and one in February 2006.

9 A Yes.

10 Q Can you think of any others?

11 A I don't remember now.

12 Q Would you like to take some time to
13 think about it?

14 A Can you show me that copy of the page
15 that showed that?

16 Q It is right at the bottom of the pile.

17 A I don't get the date.

18 But I think it was -- there's still
19 one more.

20 I don't remember. That was early
21 2005.

22 Q So you think that you were laid off in
23 early 2005?

24 A Yes.

25 Q Like sometime in February?

1 Bernardo Ramirez 130

2 stay over there all day to 7:00 and get out at the
3 time from the job.

4 So they start to send us memos because
5 we get there and it was snowing. And sometimes we
6 get there fifteen minutes later.

7 So they start to complain about us.

8 After that, they send Simon and me
9 home.

10 Q Were you replaced on the project?

11 A For sure. Yes.

12 Somebody else go to finish the job.

13 Q Do you know who it was?

14 A No.

15 Q So the only reason that you believe
16 that you were released, was that there was more
17 work to be done?

18 Is that right?

19 A Yes.

20 Q What was it that you were doing on the
21 roof?

22 A We was connecting -- we were
23 installing a machine, air conditioning machine and
24 connecting that main duct to the unit.

25 Q Is that something that has to be done

1 Bernardo Ramirez 131

2 outside?

3 A Yes.

4 Q Is installing a machine and connecting
5 it to the duct something that you ordinarily do?

6 A Yes.

7 Q I don't understand why you think that
8 this was discriminatory, that they made you do it.

9 Why do you believe that this was
10 discriminatory?

11 A Because, like I said, it was some job
12 to do. Some other job to do and they don't send
13 us to do it.

14 They send other people.

15 Q I thought that you were complaining
16 that they made you do a job on the roof.

17 Am I right?

18 A Yes.

19 Q Why are you complaining about that?

20 A Because they send me home.

21 Q So it's not the fact that you were
22 doing the job, that you were complaining about it?

23 It's the fact that they sent you home
24 after it?

25 Is that right?

1 Bernardo Ramirez 151

2 Foreman call in, is that correct?

3 A Yes.

4 Q But now they wanted every employee to
5 call in.

6 Is that right?

7 A Now, just every employee was going to
8 call.

9 Q Now, that was a new change that was
10 instituted on February 2, 2006?

11 A Yes.

12 Q It reads here, Bernard Ramirez did not
13 call in or call out on 02.02.06.

14 And he didn't call out on 02/20/06.

15 Is that true that you did not call in
16 or call out on February 2, 2006?

17 A Yes.

18 Q Is it true that you did not call out
19 on February 10, 2006?

20 A Yes.

21 Q A couple of paragraphs down, Angel
22 Vargas, Bernard Ramirez, Simon Norales, on
23 February 15, '06, Roman visited St. Francis
24 Hospital at 3:00 p.m. to explain the scope of the
25 job for the following morning, but Angel, Bernard,

1 Bernardo Ramirez 152

2 Simon had already left the site.

3 They called in at 3:36 to call out.

4 Is that true?

5 A Yes.

6 But Simon had already left the job.

7 Q There is also a paragraph in here
8 relating to Edward Abramov stating, Edward
9 Abramov, Partner, would call in and state that he
10 was present instead of calling in himself.

11 A I know nothing about it.

12 About the case over here.

13 Angel Vargas, Simon and me, we was
14 working on the -- that was the day one of those
15 days, we was working on the roof.

16 And Simon tells us to work straight.
17 Like don't stop and leave early.

18 We left the place that day like 2:30.
19 And this guy showed up where he don't find us.

20 We was on our way to go home because
21 we worked straight.

22 We don't take a break and we don't
23 take lunch.

24 Because we was working in that snow
25 and at that time it was like twelve to fourteen

1 Bernardo Ramirez 153

2 inches.

3 We was working on the roof. We tried
4 to do the job for the day and leave early because
5 we were on the roof.

6 Q Did Simon talk to anyone before he
7 told you to work straight through the day?

8 A I believe so.

9 Because he was the Foreman.

10 Q So Simon was the Foreman and told you
11 to work straight through the day?

12 A Yes.

13 Q Did you receive this memo on or about
14 February 17, 2006?

15 A That was like Monday. Around this
16 time.

17 Q It was sometime in February 2006?

18 A Yes.

19 Q Are you aware that there were
20 employees, according to the memo, who state that
21 you and Angel and Simon took lunch that day?

22 A Yes.

23 Q Did you know that at the time you
24 received this, that those employees were saying
25 that?

1 Bernardo Ramirez 154

2 A No.

3 We don't know. We call. We talk with
4 Roman.

5 Roman call us by phone and we explain
6 to him why we left.

7 Q What did Roman say?

8 A No.

9 He don't say nothing. He still make
10 the memo.

11 Q So Roman made this memo?

12 A The company, they go to the office and
13 they make us to get the memo.

14 Q Are you supposed to take lunch?

15 A Yes.

16 Q Does it say in the Local 810 agreement
17 that you were supposed to take lunch?

18 A I believe so. Yes.

19 I don't know.

20 Q Were you asked to explain why you did
21 not call in or call out on February 2, 2006?

22 A No.

23 Q Did you ever explain that to anyone?

24 A No.

25 Q Why didn't you call in and call out?

1 Bernardo Ramirez 162

2 Bureau of Labor Law?

3 A Say that again.

4 Q Is that a letter to you from the
5 Bureau of Labor Law?

6 A Yes.

7 MR. WOTORSON: Note my objection.

8 Q The document is dated July 28, 2005.
9 Is that correct?

10 A Yes.

11 Q Is that document in response to your
12 complaint to the Comptroller's Office?

13 A Yes.

14 Q So, would you agree then that you must
15 have complained sometime before July 28, 2005?

16 A Say that again.

17 Q Do you agree that you must have
18 complained sometime before July 28, 2005?

19 A Yes.

20 Can I have a break now, please?

21 MR. CAPOZZOLA: Sure.

22 Off the record.

23 (Whereupon, a brief recess was taken
24 off the record.)

25 Q How did you first get in touch with

1 Bernardo Ramirez 163
2 the New York City Comptroller's Office about this
3 complaint?

4 A They showed up to the place where we
5 were working.

6 Q Do you recall when that was?

7 A Sometime it started in 2005.

8 Q The beginning of 2005?

9 A Yes.

10 Q Do you recall who showed up?

11 A An investigator from the City.

12 Q Did you speak to that Investigator?

13 A No.

14 Q Was that a man or woman?

15 A A man.

16 Q Who did the Investigator speak with,
17 if you know?

18 A Simon.

19 Q Did he talk to anyone else?

20 A No.

21 Q What is the next thing that happened
22 that led you to filing your complaint?

23 A We find out that Midtown don't pay us
24 the right money.

25 And we know they owe us some money.

1 Bernardo Ramirez 167

2 York City Comptroller's office visited the site on
3 June 2005.

4 Bernardo Ramirez spoke with the
5 Inspector and the Inspector told him that he was
6 being underpaid.

7 Is that all true?

8 A Yes.

9 Q Roman Liberstein, Bernardo Ramirez'
10 Supervisor, later told Plaintiff that he had
11 become aware that an Inspector had been on the job
12 site.

13 Liberstein then asked Bernardo Ramirez
14 what he had said to the Inspector.

15 Is that true?

16 A Yes.

17 Q Bernardo Ramirez truthfully told
18 Liberstein that the Inspector informed him that he
19 was being underpaid.

20 He also told Liberstein that he and
21 the other Plaintiffs in the Instant Action were
22 interested in pursuing the prevailing wage and
23 discrimination claims and that they had cooperated
24 fully with the Inspector.

25 Is that true?

1 Bernardo Ramirez 168

2 A Yes.

3 Q So you did have a conversation then
4 with Roman Liberstein?

5 A Yes.

6 Q When was the conversation?

7 A That was between the time after the
8 Investigator showed up.

9 Q This was very early in 2005?

10 A Yes.

11 Q I thought that you had told me earlier
12 that you did not speak to the Investigator at that
13 time.

14 Are you now saying that you did?

15 A I don't speak with the Investigator.

16 I speak with Roman.

17 Q After this conversation with Roman,
18 did you have any other conversations with Roman
19 about this whole issue?

20 A Yes.

21 He take me off from the job and put me
22 in another place.

23 That was the school.

24 Q When was this?

25 A That was like July 2005. July or

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT

4x

5 ANGEL VARGAS, FELIX BONILLA, RYAN McKENZIE,
6 BERNARDO RAIMREZ and SIMON NORALES,

7
8 Plaintiffs,

9
10 - against -

11
12 MIDTOWN AIR CONDITIONING AND VENTILATION,
13 LTD.,

14 Defendant.

15x

16
17 2 Penn Plaza
18 New York, New York

19
20 December 17, 2007
21 4:30 P.M.

22
23 CONTINUED DEPOSITION of BERNARDO
24 RAMIREZ, one of the Plaintiffs herein, taken by
25 the Defendant, pursuant to Order, held at the
above-noted time and place, before a Notary
Public of the State of New York.

* * * *

1 Ramirez

2 A I think, yes. Some guys get laid off.

3 Q There were other guys there that were
4 laid off?

5 A Yes.

6 Q You don't remember their names?

7 A I just remember like two guys.

8 Q What were their names?

9 A Ekeel (phonetic). Solomon.

10 Q What was the race of Ekeel?

11 A I don't know.

12 Q How about Solomon?

13 A I don't know.

14 Q Were they white?

15 A They were black. Spanish.

16 Q Black or Spanish?

17 A Black and Spanish.

18 Q Can you remember the names of any other
19 people that you have not mentioned who did sheet
20 metal work?

21 A No.

22 Q Are you claiming as part of your
23 lawsuit that you should receive wages from public
24 projects that you worked on?

25 MR. WOTORSON: Note my objection to

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Ramirez

the form of that question.

Ask that in a different way please.

Q Have you ever worked on any projects similar to the 9th Precinct, which were for City or State agencies?

A Yes.

Q You have received money for the work that you did on the 9th Precinct, correct?

A Yes.

Q Do you still believe that you are entitled to additional money based on the work at the 9th Precinct?

A For other projects, yes.

Q But, I'm asking you about the 9th Precinct.

Do you believe that you are entitled to additional funds for the 9th Precinct?

A Probably not.

Q Probably not?

A Yes.

Q You received a substantial check about one year ago. Correct?

MR. WOTORSON: Objection to the phrase substantial.

1 Ramirez

2 Ask that again.

3 Q Did you receive a check from the New
4 York City Comptroller's office?

5 A Yes.

6 Q How much money was it for?

7 A \$41,000.

8 Q Now you claim that you are entitled to
9 back wages for other projects. Is that correct?

10 A Yes.

11 Q Which projects?

12 A Fire department and Chelsea. And the
13 school.

14 Q What school?

15 A The one in Brooklyn.

16 Q Are there any other projects that you
17 are entitled to back wages for?

18 A Yes.

19 Q What other projects?

20 A Lincoln Hospital and Metropolitan
21 Hospital.

22 Q Are there any others?

23 A I don't know now.

24 Q When was the Metropolitan Hospital job?

25 A I don't remember now.

1 Ramirez

2 Q Was it in the 1990's?

3 A I don't remember now.

4 Q When was the Lincoln Hospital job?

5 A I don't remember exactly.

6 Q When was the Brooklyn school job?

7 A 2005.

8 Q When was the Chelsea job?

9 A 2002. 2000 -- let me see -- 2003/2004.

10 Q When was the fire department job?

11 A 2002. 2001/2002.

12 Q How much do you believe that you are
13 owed for the fire department job?

14 A I don't have a calculation right now.
15 I don't know exactly.

16 Q How much do you believe that you should
17 have been paid per hour for the fire department job?

18 A Which one are you saying?

19 Q The fire department job.

20 A That should be for around the City wage.

21 At that time the City wage was like \$45 an hour.

22 Q How do you know what the City wage was
23 in 2001?

24 A Because it was the other guys who worked
25 for the City projects. They tell me.

1 Ramirez

2 Q When did they tell you that?

3 A When I was working over there.

4 Q During 2001/2002?

5 A Yes.

6 Q How much had you been paid per hour on
7 the Chelsea project?

8 A Fifteen, sixteen.

9 Something like that.

10 Q Fifteen or sixteen dollars?

11 A Yes.

12 Q I want to clear it up. Fifteen or sixteen
13 dollars an hour?

14 A I'm not sure how much I was making at that
15 time.

16 Q How much should you have been paid?

17 A They was giving me a raise.

18 Q What was the City wage while you were
19 working on the Chelsea project?

20 A \$67 an hour.

21 Q What about the Lincoln Hospital project?

22 A The same.

23 Q Sixty-seven?

24 A Yes.

25 Q How about the Metropolitan Hospital

1 Ramirez

2 project?

3 A The same.

4 Q How about the Brooklyn school project?

5 A The same, 67.

6 Q But, as you sit here today, you don't
7 know how much money you should get under any of
8 these projects? Is that correct?

9 A I don't know exactly now because I don't
10 have no calculator. I don't calculate.

11 Q If I gave you a calculator, do you
12 think that you could determine how much you are
13 owed?

14 A Not really. Because I don't know how
15 much is the percent that the City takes for the
16 taxes.

17 Q Is there any other reason why you
18 cannot tell me how much you are owed?

19 A No.

20 Q You're shaking your head, no?

21 A No.

22 MR. CAPOZZOLA: No further questions.

23 That is all that I have for today.

24 (Time Noted: 6:00 p.m.)

25